

Yale Law School
Oral History Series

A CONVERSATION WITH

MYRES S. McDOUGAL

Interviewed by Bonnie Collier

New Haven: Lillian Goldman Law Library
Yale Law School, 2013

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S. Blair Kauffman • *Law Librarian* • *Yale Law School*

You are invited to eavesdrop on conversations with former deans and faculty of the Yale Law School as they recall the people, ideas, and events that helped shape this institution during their tenure. These conversations were held under the auspices of the Lillian Goldman Law Library as part of its oral history project.

The Law School's oral history project draws on the special skills of one of its long-time librarians, Bonnie Collier, who conducts the interviews. Bonnie has an academic background in history and a special interest in oral history. She also has a great talent for allowing people to talk freely, and she approaches each of her subjects with a relaxed, open-ended style. Bonnie is a respected and well-liked member of the Law School community and is the perfect person to lead these interviews. The overall project goal is to capture the unfiltered memory of key figures in the Law School's history and make these conversations accessible to a wider audience.

Most of the conversations in this series were conducted in two to three separate interview sessions, sometimes spread out over several weeks. They typically took place in the comfort of the subject's office. Each was recorded and later transcribed. The transcriptions were copy-edited for errors and the occasional indecipherable mumblings deleted.

Otherwise, the oral history appearing on these pages reads very much as a direct recording of the actual conversations. Thus, some odd phrasing and occasional dropped clauses are inevitable and have been maintained in the interest of authenticity. Our hope is that readers will welcome the lack of intrusion between editor and end product and be forgiving of the twists, turns, and repetitions these conversations sometimes take.

Oral history is a complement to traditional written history and can be read for an enriched understanding of past events. Those readers who are familiar with Yale Law School will recognize the participants in these conversations and many of the personalities and events they mention.

Those who are less familiar with Yale Law School or who simply want a fuller understanding of its past are encouraged to read some of the published accounts, particularly the *History of the Yale Law School: The Tercentennial Lectures*, edited by Anthony T. Kronman (2004), which offers a broad account of this law school from the time of its founding through the late 20th century. Written history provides an analytical and interpretive narrative, while oral history provides a personal perspective. Both have important roles in helping shape our understanding of the past. The former offers the historian's sense of reality based on the sources drawn upon and the author's own perspective, as shaped by culture, place and time. Oral history can serve as a primary source for written history. It provides emotional depth that written history does not and offers the reader a first-hand account of the events and personalities.

The oral history project fits into a tradition of Yale Law Library publishing projects dating from the early 20th century. The Yale Law Library Publications is a now-defunct series inaugurated in 1935, in cooperation with the Yale University Press. Notably, four of the publications in this series provide a history of the Yale Law School from its founding to 1915. More recently, the library teamed with Yale University Press to launch the Yale Law Library Series in Legal History and Reference, with titles beginning in 2007. Additionally, the library's online publishing ventures include the Avalon Project, which presents digital documents relevant to the fields of law, history, economics, politics, diplomacy, and government, and the Yale Law School Legal Scholarship Repository, which presents digital images of student prize papers and scholarly articles authored by Yale Law School faculty.

Our goal with the oral history project is to assist future researchers with gaining a better understanding of Yale Law School's past by offering them direct access to the words of its deans and faculty – the policy makers and participants. Perhaps some future written history will draw on these conversations as a source for gaining a clearer understanding of Yale Law School's past.

MYRES S. MCDUGAL (1906–1998), a member of the Yale Law School faculty for fifty years, became Sterling Professor of International Law in 1958. He graduated from the University of Mississippi, received an LL.B there, was a Rhodes Scholar at Oxford, and earned a J.S.D. from Yale in 1931. He served as assistant general counsel of the U.S. Lend-Lease Administration during World War II. He then returned to Yale Law School, where he and Harold Lasswell developed the influential policy science approach to international law.

Some of McDougal's publications include:

The Law School of the Future: From Legal Realism to Policy Science in the World Community (1947).

The Public Order of the Oceans: A Contemporary International Law of the Sea (1962, with William T. Burke).

Law and Public Order in Space (1963, with Harold D. Lasswell).

Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity (1980, with Harold D. Lasswell and Lung-chu Chen).

The International Law of War: Transnational Coercion and World Public Order (1994, with Florentino P. Felciano).

Myres McDougal

September 9, 1996

BONNIE COLLIER: Well, let's start with Mississippi. Tell me about your childhood in rural Mississippi.

McDOUGAL: Well, I was born in a little place called Burton. It had a population of about 600 in 1906. My father was still going to medical school. He went to the University of Louisville, which he thought was one of the four best medical schools in the country, and he was interning with Dr. Boliver Smith, a family name, but who was no relation despite the name Smith. My father was interning there, so I spent the first years of my life in Louisville, Kentucky, and Burton, Mississippi, and through the benefit of psychoanalysis, I can recall some of the things and events very clearly.

So there's no question it was a very rural little community, as I said — 600 people. It was on the banks of a stream that was called Bear Creek. My father grew up on the east side of Bear Creek and my mother's people were on the west side of Bear Creek, some distance away, two or three miles away. My grandfather was one of the richest men in the county. He owned sawmills and gristmills and things like that.

The greatest influence on my life was my Grandmother Smith. She told me that I could do anything I wanted to, just get out and get some energy. We just found her bible, so I'm going to learn more about the family history than I ever expected to. A distant cousin by the name of Crow came up with her family bible. I haven't yet seen it, but I sent to have a copy made so I'll know a little more about my background there.

This lady was a tremendous influence on me. She was the one who encouraged me to work and get out and do something. I worked with my grandfather during the summer. We lived in the little town of Booneville, which was only twelve miles away, but at that time it was two or three hours. It was twelve miles away from the railroad, and my father was

practicing medicine in this little town of Booneville. As I said, our place was burned down recently and the way the place was divided up, I didn't get any of it. I felt that one of my cousins, a woman, had cheated me out of it, but I didn't take it to court. I supported an aunt in my grandfather's place for forty years on the understanding the place was coming to me, but I still have 300 acres of land right near there. So I've got all I need.

BC: The house burned down?

MM: Yes, the house burned down. It descended to the sons of a cousin, and they didn't take care of it, and I'm told by neighbors that there was nobody there for months at a time and eventually somebody came by and just threw a match into it. I was there recently, took pictures of the place. If you want pictures, I've got a handful of pictures over there. Cheryl can find them, with outstanding chimneys of this old place that was really my home, and I expected to go back there and live, but I know now that I'd never live there. It's so far—it's not more than fifteen minutes from civilization, it's that much out of town and I'd get very lonely there very fast, though. The house still has a beautiful oak tree, some five or six feet right in front of it. It's a wonderful place. I still wish I had it, but in my health I couldn't make any use of it, even if I owned it. I do have 300 acres in Georgia Pines which produces a fair income.

BC: And you went to the university?

MM: I went to the University of Mississippi. I was fifteen years old when I entered there. In high school they skipped four of us. There were two boys and two girls who skipped three or four grades in grade school because they didn't have classrooms big enough for us. They had to skip some people, so they skipped us, and there were two boys and two girls who went all through there, and I'm the last one living. One of the girls, a girl I knew from kindergarten died the other day, and she and I used to go on double dates. We never dated each other, but we went on double dates with other people. She was the closest friend I had left there and she's gone now.

BC: Did she live there all her life?

MM: No, she was very smart. During World War II she moved over into the Delta and taught school, made enough money that she was able to buy a lot of that rich Delta land. She was a very rich woman and she married a country singer. Her husband was a singer, a very famous singer in Mississippi, but her son was very famous on Long Island. I'm trying to get her last name. It won't come to me at the moment. Cheryl can give it to you. We corresponded for years and Cheryl's got the address. She can find it in the files for you very easily, but as I said this girl died the other day, and her people called me and told me. She married a very famous blues singer there, and her son is very famous on Long Island in New York. But the name is escaping me at the moment. Something like Throat, but that wasn't quite right.

BC: Did she go to the university with you?

MM: No, no. We had what's called Mississippi State College for Women and most of the girls went there. If you weren't very pretty you didn't go to university. Only about a third of the girls at the university—only about a third of the members of the university were girls, and they were all very pretty marrying types.

BC: University of Mississippi, what year would that have been?

MM: I went there in 1922 and I played guard and kicked. I was on the freshman football team, and I played guard and kicked on the varsity team for a year or two. I had to have some interest in athletics to get a Rhodes Scholarship. Finally, a former Rhodes Scholar told me I had enough and I quit. I intended to be a student.

I was a teacher of Latin and Greek. The most interesting thing, I taught Latin and Greek, freshman Latin and Greek for three years. I was at the university as an instructor.

BC: Instructor in classics.

MM: In the classics, in the school bulletin, although I never made Phi Beta Kappa, but I discovered on my recent trip why. I'd always sort of felt under a sad influence on that, but they didn't have a chapter of Phi Beta Kappa.

BC: That's a good reason.

MM: So I couldn't have been a member if I tried. They established a chapter at the same time I got this honorary degree the other day.

BC: Just recently?

MM: Yes, just a few months ago.

BC: So a lot of people missed out. Then you went over to Oxford?

MM: Oxford, England. I was very lucky at Oxford, England. I was put into a double room there, a beautiful paneled room with four sides to it to the weather. I was with a boy from North Dakota, Belsheim, he and I both had studied a little law in this country, and they assigned us a tutor in St. John's who had never taught law, never studied law. He was going to London to study law and teach us at the same time. We were a little bold and said, "We won't go to anyone who knows less than we do." We both had done pretty well. I had done pretty well at Mississippi and Belsheim at North Dakota. Sir William Holdsworth had been tutor of law in St. John's College.

Sir William Holdsworth is a very famous legal historian. He has nine or ten volumes of English legal history and he said, "Well, I'll take the young men." And we went to him for three years and never knew that he didn't get any money. The fellow who had no law got the money. This didn't make, of course, any difference to us. Holdsworth treated us like sons, and he had open house every Sunday and we met many famous lawyers. We were very much better off than we would have been, and Holdsworth thought I was pretty good and he'd send me to Yale. He said he'd send Belsheim to Chicago, which he did. He wanted us both to go into teaching, go into scholarship. He told me he wrote one line to Yale. I said, "One line won't get me into Yale," and he said, "The one line I wrote will," and he told me what it was. He says, "McDougal is the best student I ever had."

BC: That's a good line.

MM: Yes, it is. I think I've got a copy of it somewhere in my files. I did check it and it was in the Yale files at one time. He and I became very close together.

BC: What kind of person was he?

MM: Well, he was a very fine man. Again, it's hard to say. His wife was a bitch, is the best word to use, and he had one son who was an aviator and killed during World War II. He had an interesting thing about him. He had a home, a beautiful English home underneath the bridge that runs over the Thames River, just where Christ Church is. If you know Oxford, you know Christ Church, there's a bridge that runs across the Thames right at Christ Church, and there's a little island underneath this bridge and on that island is a home. This was Holdsworth's home and he had his friends there on Sunday and he had us out there every Sunday for tea or whatever.

BC: Did he have to get there by boat?

MM: No, no, you walked down some steps and there was a platform that ran out of his house. His house was on an island. The platform was connecting the island and the mainland underneath the bridge. It was a beautiful place. The English have a way of fixing those places that we don't have.

No, England changed my life for me. I, as I indicated, had not been a great scholar, though eventually I was on the faculty as a teacher of Latin and Greek, which gave me a good run with the English. You see, I knew more Latin and Greek than the English did, so it gave me a good start at Oxford.

BC: Then you came back to Yale.

MM: Holdsworth thought he'd get me an assistant professorship at Yale, and so he wrote that one line about me being the best student he ever had. Yale and Columbia were just beginning what's called American legal realism at that time. It was a branch of jurisprudence that Lasswell and I eventually wrote a history of. I have a two-volume history of American jurisprudence over there. Where were we?

BC: We were talking about when you came to Yale, in 1930 would that be?

MM: Yes. I thought the Yale people were crazy beginning this legal realism, and this was the exact opposite of what I had been taught at Oxford, and I fought them tooth and toenail. There was a man named Sturges who was the best teacher at Yale, and I moved in on him and tried to

find cases he had not read. I never found a case the man had not read, to tell you the truth. He was a good teacher.

BC: Wesley Sturges?

MM: Wesley Sturges.

BC: He was dean wasn't he?

MM: No, he was dean later, but he was at the time the most popular teacher. The school had only about 125 students and he was the most popular teacher here. When he called on me one morning, and I agreed with him, he couldn't believe what he had heard, but he and I then became close friends. He told me he'd get me a job in Illinois and bring me back in three years, and the dean, Charles Clark, confirmed that. He said, "If you're really an American legal realist we'll bring you back in three years." So at one meeting of the Law School Association in Chicago, I deliberately attacked a Harvard man called Joey Beale and cut him up pretty badly. Beale was a very famous man and I cut him up on purpose, just for Clark to hear it and Clark told me that day, he said, "We'll bring you back. I think you've grown up," which was very interesting. Clark and I eventually became close friends. He wanted to go to the Supreme Court, and he was a much better man than Douglas.

BC: You knew Douglas?

MM: Yes, I knew Douglas. I was to teach with Douglas. He and I wrote an article on bankruptcy for the Encyclopedia Britannica, and he and I were to teach together, but Abe Fortas came back the last minute that year, and Douglas preferred Fortas to me. So Clark took me over, and I taught property law with Clark then instead of business units with Douglas, and it turned out to be the best thing that ever happened to me. I knew nothing about business units. I hardly knew where Wall Street was and then land law, of course I'd grown up on the land and land was something I knew, and I became very famous as a land law teacher, and still have the best case book probably on land law that exists.

But it was lucky you see. I became very popular with the students in land law, and they would have thrown me out on my head in business units because literally I didn't know anything about the stuff.

BC: And you were interested in property?

MM: Well, I got interested, you see. I had always been interested in land. I still own, as I said, 300 acres right on the banks of this new military cut, which would be valuable. Some day it will be the [unclear] of the United States, one of these days.

Now, Yale changed my life and the University of Illinois at that time had a former editor-in-chief of *The Yale Law Journal*. He had been dean at Illinois for forty years, believe it or not. When I went out there he made me associate dean, and I loved it there. I'd spent two summers in Chicago with my father during graduate study, and I'd been at Northwestern for a summer and Chicago for a summer, and I knew and loved both places.

BC: What was that person's name, the dean at Illinois?

MM: The dean at Illinois' name was Harnow, Albert James Harnow, and he became almost a father to me. As I said, he was there for forty years and expected to get called back to Yale and never got called. I was up in Michigan on a fishing trip—these are all anecdotes but they might be useful to you. I was up in Michigan on a fishing trip with some other people there from Urbana, and I went into a grocery store to get some food, salt and so forth, and I found a telegram for me in the grocery store inviting me back to Yale, and it was already two weeks old when I found it.

BC: Oh, you're kidding!

MM: It was two weeks old when I found it, and I went back down to Urbana and I told the dean there. I said, "I've lost all interest in going back to Yale. Why don't I write them that I'm no longer interested and stay here?" I was his associate dean at the time, and I knew it would be difficult for him to give me up in the middle of the summer. He sat there and turned the telegram and looked it over and over. He said, "Mac, I waited for this for forty years and it never came. I would advise you to go."

BC: Very generous.

MM: It was, yes.

BC: Do you remember who the telegram was from?

MM: Charles Clark. He was the dean and this was Jim Harnow that he was sending the telegram to. As I said, Harnow had been editor-in-chief of the *Yale Law Journal*, but for some reason they never called him back. He was a famous man. He wrote a very famous book *The History of Criminal Law*, that the American Bar Association published, but somehow or other the Yale people never went for him.

BC: So then you came back to Yale.

MM: My wife insisted that we come to Yale when we got the opportunity. She was a Lee of Virginia and the Lees are very proud and rich people. She has always had her own money, which is both an advantage and a disadvantage. When your wife has her own money, you can't boss her around.

BC: As long as she doesn't boss you around, I guess that's okay.

MM: Well, I don't know.

BC: So you came back and you started teaching property.

MM: At Yale I taught property law with Charles Clark, and he was eventually made a federal judge of the Court of Appeals in New York. Clark was made a member of that court, and he wanted me to help him get on the Supreme Court. The chairman of the judiciary committee on the Supreme Court, Washington, was a man named James Eastland. You may have heard the name. He and I were classmates at Old Miss. I was top of the class and he was the bottom, but he'd always do anything I wanted. If I wanted a favor and I walked into his office and said, "Jim, I need something," he'd just buzz for his secretary and say, "Dictate the letter." He'd sign it right there in front of me. But he was a better man than he was given credit for. He died a rich man, but he was born a rich man. His father was a rich Delta planter, and I don't think they ever proved anything crooked on Jim, though I wouldn't be surprised at anything they found on him.

I might tell you a side story there, again to show you a little how the Old Miss people lived. Jim Eastland was a great prankster and we lived in dormitories then, not fraternity houses, only the last year that we were there. He took a boy out on a trip down the railroad to visit with a young lady and they had it all framed up. Somebody jumped out of the bushes and yelled they were going to kill him. He took off across the woods and destroyed his suit, but Jim Eastland was responsible for this. This was a prank that he enjoyed and prepared. Life in Mississippi in those days was very different from life up here.

BC: More fun? Quieter?

MM: No, much rougher. Everybody had plenty of money, animals. I rode horseback. When I first came to New Haven people wanted to know why I never rode in East Rock Park there. They had a stable at that time in East Rock Park and I said, "Hell, I was on so many horses before I was fifteen years old that I never want to see one again."

BC: When you came to the Law School, tell me a little bit about what you found. What was the tone of the place?

MM: Well it was very good. We had, as I said, fewer students in those days. The students were very good. I think they probably were better than they are now, but all old men think that. But they were superb students. One or two of them have been through here and through this nursing home. I think there are probably two or three upstairs now. I haven't been up there recently. John Tillson, for example. His father was the Republican boss of Connecticut. He and his wife were up there and his wife died the other day. He's still living up there I think.

BC: Do you ever see him?

MM: Yes, John Tillson. He comes down and eats in the dining room there. When his wife was still alive, he'd come down and eat with her. She was assistant to Whit Griswold. She was assistant to the president for many years.

BC: Interesting...

MM: John Tillson. She was my student, too. She and he were in the first class I ever taught at Yale Law School. I was here as a visitor taking Sturges's place. I don't know whether this should go in or not, but maybe it should. I was invited here because Wesley Sturges, who was a popular teacher, and Charles Clark quarreled about something. I still don't know quite what they quarreled about, and Clark told Sturges he'd better take a year's leave of absence, and Sturges said he would, but he could name his successor. Clark wanted to know who he wanted, and he said he'd take McDougal, and that's the way I came back to Yale, as Sturges's successor for a year. Then they decided they'd like to keep me when Sturges came back, and I did move into the field of property law. I knew by that time I was better in property law than I would be in anything else.

BC: That would have been 1931, is that right?

MM: Let's see, I came here as a student in 1930, went to Illinois in 1931.

BC: Oh, 1934 maybe.

MM: About 1934, yes.

BC: Maybe you could tell me how this shift to international law happened.

MM: Well, that became because of a man named Harold Lasswell. You must have hit his name by now. At Illinois – not Illinois, but Chicago – they put the names of the teachers on the door while they were teaching, and I was reading *The New York Times* at breakfast one morning, read a review by a man named John Chamberlain, who was the book review editor for *The New York Times*. He was the son of the furniture people here. This review ended up – this was Lasswell's book on world politics – ended up "This is a great book. I can't understand it, but there must be people who can."

BC: How did he know it was a great book then?

MM: I don't know, but this is the way he ended the review. I walked across the Chicago campus, and when I came out of the room that I was teaching in, I saw this name – Lasswell – on the door opposite me, and I thought well, maybe I'll drop in to see if I can understand the great man. So I dropped in the back of the room, and he was applying psychoanalytical

techniques to the autobiography of H.G. Wells. He made you think you could see him tick. So I walked up after class and said I was a visiting member of the law faculty, and I hoped he didn't mind my dropping in to hear him. I had enjoyed it very much. His reply was "Would you like to have lunch?" This was 10:00 in the morning. So we walked across the campus there to the faculty club—they've got a wonderful faculty club at Chicago—and had what was really breakfast and talked for two or three hours. I went back over to the law school and told them I had met this wonderful man, and they threw up their hands in horror and they said, "He's crazy!" I said, "What do you mean he's crazy?" They said, "We were going to do a joint study and he wanted to know whether the courthouse was wired with direct or alternating current," and they would roar with laughter and throw up their hands when they said that. This set me back a little.

BC: Let me close the door. Excuse me one second. [tape turned off] Pick it up with your breakfast, lunch, brunch with Lasswell.

MM: Well, he told me at that time that he intended to leave Chicago. He didn't like Robert Hutchins. Of course, Hutchins had been at Yale Law School. I knew all about him. In fact, the first nasty article I ever wrote was against Hutchins, so I told Lasswell I could understand how he didn't want to stay with Hutchins. He said he was going to come to New York and go into public relations work and would like to –

BC: Lasswell going into public relations?

MM: Yes. Said he'd like to have some connection with Yale, and I told him to give me a ring when he got to New York and come out and visit with me. Things turned out exactly right for him. Thurman Arnold was teaching a course in jurisprudence in the Yale Law School, which he didn't want, but he was teaching it and the students didn't like him. He was invited to be assistant attorney general in charge of anti-trust, and I told him, "You fool, you won't go." And he said, "It's the chance of my life," and he did make it the chance of his life. He eventually became a federal judge. His wife wanted a lot of money. His wife, incidentally, just

worshipped my wife. My wife is a Lee of Virginia and this woman from Arizona thought the Lees of Virginia were made of gold. Where was I ?

BC: We were talking about Lasswell coming into New York and coming to see you.

MM: Well, he came to New York and he called me up one day and said he'd like to come up to Yale and visit me. I told him, "Get on the train and come up," and said I had a job for him, and I did. Thurman Arnold had this course in Jurisprudence which he didn't want, but a man named E.S. Robinson, a very famous psychologist, stepped out of the graduate school one day, was hit by a bicycle and killed, and I had to take his place with Arnold, which I didn't want, you see. So when Lasswell came up, there was a course in jurisprudence that could give him a full-time job for a time, which we did. He stayed and taught before the war and after the war he was one of the first seven people we elected to the faculty. So he came back, and he and I worked together in jurisprudence from then on. Then he finally retired and went back to New York and had an apartment there.

BC: He was anxious to come to Yale?

MM: Oh, yes. I still don't know whether he was fired at Chicago. He told me he was leaving voluntarily. He didn't like Bob Hutchins, and since I knew Hutchins I could understand that, but I don't know whether he was fired or not. Some people say he wasn't. Michael Reisman doesn't think he was fired, but I was told he was fired.

BC: What was the problem with Hutchins?

MM: Oh, Hutchins was just a fool. He was a dim-witted sort of fellow. He was a favorite of one of the Yale presidents. What was the name of the Yale president in the early 1930s there? I had to go over and interview the son of a bitch before he would hire me at the Law School. Who was the president of Yale at the time?

BXC: James Angell.

MM: No, no, no. There was a very famous president of Yale, a very strong, powerful fellow. Maybe it was Angell. He preceded Seymour. I worked

with Seymour. I was one of Seymour's assistants during World War II. Did a study for Seymour on regional planning in New England.

BC: When you first came to Yale, who were some of the other people you taught with? Underhill Moore?

MM: Underhill Moore was probably the best paid man. He was paid fifteen thousand dollars, which was regarded as an outrageous sum by the rest of the faculty, but he was the most famous man. Incidentally, I came to know him very well. We had offices next door to each other for some twenty years, and he and I became very close. He told me that his life had been a failure. He said he thought there was one unit of human interaction, but he said, "I finally decided that there was not." He'd study interactions in drugstores and things of that kind. He was a very naïve man in some ways. He had faculty wives working for him, young faculty wives who needed money, and they reported back to him. There was one house over on that street that runs east and west.

BC: In New Haven?

MM: In New Haven, the big street that runs east to west with all the stores on it. What's the name of that street?

BC: Church Street?

MM: No, no, it runs east to west.

BC: Chapel Street.

MM: Chapel, yes. There was one house there that the people stayed a certain length of time every day and no more. They knew what it was, but the joke was that Underhill Moore didn't know what it was, and they had to tell him. He was a very naïve man.

BC: I think of him as one of the premier legal realists.

MM: Well he was supposed to be. He was at Columbia in the beginning, you see, but he left Columbia. Underhill, in a sense was a great man, but he'd had the sense enough to know he'd failed, which always impressed me, that he had not learned. In fact, he had learned the opposite of what he thought he was going to learn, but he was an honest man.

BC: What about William Douglas?

MM: Well, I knew him reasonably well. In fact, he was a prime son of a bitch. He was nice to me when I was a graduate fellow. He lived down on Willow Street, and I later lived in an apartment next door to a place where he lived, but he lived out there and he'd take me to lunch, and he and I got to know each other pretty well. I was going to stay and work with him, and Fortas decided to come back and he, of course, preferred Fortas to me, and I discovered I preferred land law to business units.

BC: How about Fortas?

MM: Oh, I knew Fortas well. I still think he was an honest man. I don't know what was going on there. His wife was my student and she had expensive tastes, and I don't know just what happened there. Fortas came from Memphis, and you see Memphis would have been in Mississippi if they'd drawn a straight line. Now, Fortas, I still think he was an honest man. As I said, his wife had expensive tastes, and at her request I wrote an obituary of Fortas. I had trouble getting both a picture of him and an obituary. Let me go into the other room a minute.

BC: Okay. [tape turned off]

MM: There is another person I want to tell you about before I forget. I worked in Washington for three years during World War II. My boss, a man named Oscar Cox, had not been a great student at Yale. He was business manager of *The Yale Law Journal* and business manager is the post they save for the weakest man, but Cox turned out to be the best lawyer I've ever seen out of Yale. He was working in the Treasury Department and was asked by Harry Hopkins – he and another fellow – but the name of the other fellow I forget – but Cox was asked to draft the Lend-Lease Bill. There's a lot of history here, and I think I ought to get into it.

BC: Sure

MM: But Oscar Cox turned out to be just brilliant, and Harry Hopkins recognized the boy's brilliance and created the Lend-Lease Administration and put Cox and this other man who finally left in charge of it. Cox really ran the Lend-Lease Administration during the whole of its existence. Unhappily, he died of a heart attack just after the war and never got the reward that he deserved, but he ran the Lend-Lease Administra-

tion throughout the war and was Hopkin's hatchet man. You see, with Lend Lease they had plenty of money to do anything they wanted to. One of my first assignments was to establish the legality of armed forces on icebergs, to give you an example of the sort of thing we had to do, and of course we had no trouble establishing the legality of armed forces on icebergs. Anything Cox wanted was legal you see. He was a brilliant and gifted man.

BC: And you worked with him?

MM: I worked with him for three years there, and I've never had a better experience. He had three offices. I had two. I had an office in the Lend-Lease building and an office over at the Department of Justice. The one over in the Department of Justice was across from Cox. Cox was then Assistant Solicitor General. That's now an Assistant Attorney General in charge of constitutionality. We overruled the Attorney General several times on constitutionality. Even though the Attorney General told the President he couldn't do something, Cox would tell him he could, and we'd get the reasons.

I was down in Mississippi one time trying to get a few days rest with my family when I got a call to get back to Washington at once and get rid of Milligan's case. Maybe you know the Milligan case. It's a very famous Civil War decision about spying, and I was able to get rid of the Milligan's case. Of course, I happened to know a book with the history of Milligan's case in it and what was involved was the eight saboteurs. One of them had turned state's evidence, and we were taking a life history of all of them, you see, and the question was whether they could be tried by a military court. The Attorney General Biddle had written an opinion that they couldn't be tried by a military court, and Cox rendered an opinion that they could, and he told me to get back from Mississippi and prove he was right, which of course I did. These were great days and Cox was a very powerful man. He had his own access to Hopkins there, you see, and Hopkins would go right to Roosevelt.

BC: Did you know Hopkins?

MM: I knew Hopkins, yes. I didn't know him well, but I met him.

BC: What kind of man was he?

MM: Well, he was a very strong, fine man. I admired Hopkins, but I never knew him well, I shook his hand, but since Cox reported directly to him, you could get anything you wanted through Cox. I represented Cox on a great many things. I had all kinds of committees and meetings around the city and I'd go represent Cox. The first time I knew I could whip Wall Street lawyers, just a little country boy from Mississippi. I was a little defensive about Wall Street lawyers, but I saw I could take them very easily, though I hadn't taught them.

BC: Can you give me some stories about that?

MM: Well, let me think a minute. Well, we sat on different committees. One was a patent's committee. I sat on a patent's committee with Wall Street lawyers and discovered they didn't know any more than I did, but there were other things like that.

BC: What was the spirit of Washington in those days?

MM: Well, it was pretty grim. You couldn't get much gasoline and you were afraid of bomb attacks—the people were—I don't know whether it was a realistic fear or not. There were a great many fears of bombs. We know that the place was never bombed, was it?

BC: No.

MM: I don't think so, but people were afraid of it. No, it was pretty grim. You had to line up to get gasoline, for instance.

BC: What was the feeling in government?

MM: Pretty grim. OPA was the other place there were the most lawyers, the price controls. The price controls were very unpopular.

BC: When did you leave Washington?

MM: Well, I left Cox to go work for Governor Lehmann, to set up UNRRA-UFRO. Lehmann and I couldn't get along. He would give me orders one afternoon and then come in the next morning having changed his mind, and I'd have to change all the papers and that finally just—in fact, I think he gave me a nervous breakdown.

BC: Was he disorganized?

MM: No, no.

BC: Not knowing what direction he wanted to go in?

MM: No. he just changed his mind all the time. He didn't know what he wanted. I came to dislike him very much eventually, and I think it became mutual. He had his sister working for him, and I didn't like her either.

BC: Let's get back to Yale. I guess we had started talking about what it was like at Yale. What was daily life like when you first came to the Law School? Did the faculty go off to lunch together?

MM: Yes, we had a table over there at the time where the faculty would meet for lunch, and they haven't done that in recent years. The faculty had a dining room here. I don't know whether you know or not, that was taken away from the girls. Rostow took it away from the girls.

BC: I think I did hear that. That used to be a women's lounge?

MM: Yes, their lounge where they could escape and get away from all the men.

BC: Rostow did that?

MM: Yes.

BC: But we'll get to him in a minute. What was the relationship that faculty had with students, was it casual, informal?

MM: I think it was very good. I knew many of the students well and had good friends among the students. I remember the Darrah brothers. There were two brothers by the name of Darrah who became close friends of mine and they were just one of many. Just two of many.

BC: How about personal friends on the faculty?

MM: Well, mostly people were friendly. Underhill Moore and I were quite close. George Dession and I had roomed together. I'd roomed with George Dession in the Law School. George was just an instructor and he didn't have much money, and Charles Clark asked me to go in and pay half the rent, which of course I was glad to do, and George and I were lifetime friends. Incidentally, put him in. He was one of the best teachers we ever had here, and since we roomed together there for a year, he and

I were always close. His first wife and I were very close. I didn't know his second wife. Where was I?

BC: You were talking about some friends on the faculty. Other people you were friendly with.

MM: Well, I was friendly with Fortas. Fortas was on the faculty four or five years. He had a carpenter and a driver. His carpenter made me a desk that's still in my office at the Law School. Fortas was from Memphis. As I said, Memphis would have been in Mississippi if they had drawn the line the way it should have been drawn.

BC: And Lasswell I know was a friend. What about J.W. Moore?

MM: J.W. Moore and I were close friends. J.W. was a graduate fellow the year after I was a graduate fellow. He went back to teach at Chicago, but he and Clark were friends, and Clark brought him back here to help him formulate the Federal Rules. The Supreme Court issues certain rules of procedure and Clark at one time drew those and got Moore to help him, but Clark and Moore broke up. They quarreled.

[end of side 1, tape 1]

MM: He decided he'd go. So he went back to Chicago as a professor and something happened out there he didn't like, and we were able to get him back as a professor here. He and I had become close friends. As I said, he was a Sterling Fellow.

BC: This is Moore?

MM: Yes, he was a Sterling Fellow the year after I was, and he had these close ties with Illinois and I had close ties with Illinois, so it was natural that he and I became very good friends, and we remained friends all his life. I was quite angry when the person taking care of him there wouldn't even let me see him or talk to him on the phone. He died here in New Haven. I think it must have been one of those diseases that old men get, but they wouldn't let me see him in the last two or three years of his life. His wife had been ill, and I think she became ill again. She got ill at one time and apparently got a remission and came back. I remember having dinner with them at Mory's one night. They both loved Mory's, and

she was there, Kay Lynn, but both of them went under the weather, and their children apparently just decided they weren't going to let anybody see them. I had known both the children, but we haven't seen or heard from them in a long time.

BC: I wanted to ask you about Fred Rodell.

MM: Yes, Fred and I were very close friends. I was able to be friends with him and Rostow. Go ahead, what do you want to know?

BC: Well, I wanted to know what kind of person he was and how you and he got along.

MM: Oh, he was a wonderful person. He and I became friends when he was a senior student and I was a graduate fellow. They had a group they called the Willful Six, which included Rodell, Tommy Emerson, and some other men—I forget. There were six of them, but I knew three or four of them very well. What was it you wanted to know about?

BC: From what I've heard, Rodell had something of a fiery personality.

MM: Oh, Fred was a great man. To me, he never broke his word with me on anything. He believed in telling the straight truth. In fact, that was one of his weaknesses. He'd tell you exactly what he thought about you or what he thought, anything he was writing or what anybody was writing about. He was just a little too honest.

BC: His widow, Janet, is still in Bethany I guess, or Woodbridge, and I thought I might interview her.

MM: She's a very fine person. I know her. She was a teacher to my son, so I know her reasonably well. In fact, I knew all Fred's wives. I knew his second wife, who was a neurotic if there ever was one. My friend Lasswell tried to psychoanalyze her, but she was in such bad shape that he couldn't do much for her.

BC: I guess there were three wives.

MM: Yes, the middle one I think finally killed herself. I'm sure of that.

BC: Arthur Corbin?

MM: Arthur Corbin, he was my teacher. He was a great man. I did my thesis under Corbin and he was very good to me. I suppose you know,

he could talk the horns off a billy goat, if you went in his office in an hour or two.

BC: What did you work on?

MM: The Doctrine of Mistake in Contract Law, a field I've never worked since. It's the one thing I've written and I've never published. I've wondered whether I ought to publish it. I don't think it is as good as I was later to do. I think Corbin did teach me scholarship more than he taught me contract law, but I may still publish that thing just to have a complete set of works. I've been thinking of bringing out a complete set, and I think it ought to be included. That was the first thing I ever wrote and if it's no good, the people ought to see it was no good. But I was very fond of the subject. I'd worked on it in England and I thought I knew my stuff, but I guess now I've never been proud enough of it to insist on it being published.

BC: Well, you might want to do that.

MM: I'll think about that.

BC: Borchard?

MM: Yes, well I knew him very well. This was a very sad thing, Borchard was a rich man. You can make a fair amount of money out of international law. He lived at two or three places on the same street I lived, St. Ronan Street there, Edgehill Road. Borchard and I were good friends when I was a student, but he had very few students of international law and never had many in international law. He was a very conservative man in the pay of the power lobby and he wrote an article for the power lobby on executive agreements, and the State Department was much upset by this article and asked me to answer Borchard. When I undertook to answer him, I didn't really realize what I was getting into but I wrote the longest article I've ever written, 250 pages, and answered him. It's the longest article *The Yale Law Journal* has ever published, and I think it was necessary. What was immediately at stake was the — oh, Christ that river out there. What's the river that comes in?

BC: I'm sorry, where?

MM: Comes into Canada, the river.

BC: St. Lawrence?

MM: No, that's not the name, but this was what was at stake in the Congress and the State Department wanted it answered. In fact, an assistant secretary of the State Department telephoned me and asked me if I wouldn't do it. I talked to *The Yale Law Journal* people and they wanted it done, and I said will you give me your best competitor? I picked out their best competitor – this again was a man who should be mentioned in any statement about me. His name was Asher Lands and he's a practicing lawyer in New York, I think he still is. But we wrote the longest article in the history of *The Yale Law Journal*. Are you getting the thing?

BC: Pardon?

MM: I heard noises over there. [tape turned off]

BC: Continuing on, I'm interested in the appointments process at the Law School, and maybe you could tell me a bit about the appointment of Gene Rostow as dean.

MM: Well, the exact details are probably in my file still. I was chairman of several committees to elect deans and the papers are in my files. Sure, I might be able to find them. Let me think for just a minute. The faculty didn't want him at first. He went in by one vote, which was my vote as chairman of the committee, but he went in unanimously on the second time.

BC: What was the controversy?

MM: Well, they just didn't like him. He was arrogant. Gene is arrogant sometimes. He's good and he knows he's good, and I was good and I knew I was good. So he and I could get along, but I met Gene when he was a freshman student and I was a freshman teacher. His brother, Walt, was then a famous man. Even then in college Walt was famous, more famous than Gene and this burned Gene up. Gene was a freshman student and I was a freshman teacher. Somehow we became close friends and have remained close friends over the years.

As I said, the first time I think it was my vote that made him dean, but the second time it was unanimous in his favor.

BC: Were you able to persuade people?

MM: I didn't try to. I just told them what was what and that he was going to go in, you see.

BC: And how was he as dean?

MM: Oh, he was a good dean, a superb dean.

MM: Yes, I met Rostow when he was a first-year student and I was a first-year member of the faculty here. He was a fairly well known man in Yale College. He was a famous swimmer who played some kind of water ball. I didn't know what it was, but even then Walt was a very famous man. I think Gene was a little jealous of Walt, even then. The way I got to know them was through a man named Stanley Pargellis. Stanley Pargellis was a Rhodes Scholar who taught history, and for some reason he didn't get along with the faculty and was passed over for promotion and went and became head of the Newberry Library in Chicago, but Stanley Pargellis was one of the most brilliant men I've ever known, and he was very proud of and very friendly with the Rostow boys. When Pargellis left, my association with Gene continued. I never continued with Walt.

Gene and I worked in Washington for Oscar Cox, the man I mentioned earlier, at the beginning of the war. Both Gene and I were assistant or associate general counsel in the Lend-Lease Administration. We worked together there and I would stay in the Rostow home at night. I'd stay in New Haven and come down to Washington for a few days and stay in the Rostow home. Eventually I did move to Washington myself. My mother-in-law had always lived in Washington and had a number of fine homes in Washington.

Gene and I simply have been almost like brothers all of our lives. I called up down there and apparently the poor man is in poor health. He's got weak hips and has to use a walking stick. Despite all my ill health, I think I'm probably in better health than he is.

BC: I thought I might like to go and interview him.

MM: He would be willing to talk to you. He's a very good man. Yes, he's got the history of his deanship there. He could tell you.

BC: The Law School grew in size under his deanship.

MM: I think that was a mistake and he made another mistake. He took too many Harvard people. He's responsible for all these silly Harvard people, some of whom are still around. I won't say happily because some of them became friends of mine. One who was my best friend is dead. I don't know how many of them are gone now.

BC: Who was that?

MM: Well, Joe Bishop was my best friend and he's dead now.

BC: So you think the size of the Law School was a mistake, that it got too big?

MM: Yes.

BC: Or that the particular people were a mistake?

MM: Well, it was just a mistake to get too large. A small school is much better than a large school.

BC: What about the little bit I've read and heard about a controversy involving the size of the international program or the number of graduate students who would come?

MM: Well, I was chairman of the graduate committee, for what was it thirty years? A good many years, anyhow, and I always had an understanding with the dean that I made the selections and nobody reviewed them. I picked as many as I wanted or as few as I wanted, and that was the practice for some thirty or forty years. I wouldn't have given that leeway to anybody else, but I insisted on having it before I would put any energy into it, and I think I did have by far the best program in the country, much better than Harvard or Columbia. Dave Cavers, who was in charge of the program at Harvard, came by to see me one day and he said, "How the hell did all the deans in India turn out to be graduates of the Yale Law School?:" I said, "What do you think I've been doing the last forty years?"

BC: Building the graduate program.

MM: Yes, I was running it. I wasn't simply building it, I was it. I had this understanding with the deans that I did what I pleased.

BC: Can you tell me about some of the other dean selections?

MM: You'll have to name some of them.

BC: Shulman?

MM: Shulman, I was responsible for him. Shulman was an instructor when I was a graduate fellow here. He was the only Jew on the faculty and he was quite lonely. He and his wife were lonely, so he and his wife and I became great friends and we remained friends when I came back on the faculty. I was the chairman of the committee that made him dean. Shulman was a great man, a good man. This again was something I never quite understood, he spent a fair amount of his life over in the slums of Providence. I grew up in those red hills of Mississippi, but we almost never disagreed on anything. We were always on the same side in faculty voting or appointments or whatever it might be. He and I were very close. I had tremendous respect for him. He was one of the finest persons I've ever known.

BC: And he was only dean for a short time.

MM: Yes, well, he was dean for just a few months. He had this illness. The doctors didn't tell him. I think this again was a mistake. If I had been dying, I'd want to know it. We don't know what changes Harry would have made if he'd known he was dying. I talked to him just a few days before his death and I'm sure he did not know he was dying. I don't see how he could have avoided it, but apparently he didn't. He was very honest with me and I don't think he would have talked to me the way he did unless he thought he was going to live. He was making plans for the future, and the school would have been a very different place if he'd lived.

BC: Abe Goldstein became dean. Were you involved?

MM: No, I don't think I had a hand. I may have voted for him, but Abe again is an extraordinarily strong man. Abe and I fought a good deal. We haven't always agreed on people or policies, but I have tremendous respect for him.

BC: One person I wanted to ask about is Grant Gilmore.

MM: Well, he was a little son of a bitch. No, I didn't care for him at all.

BC: He left Yale at some point, rather brusquely, is that right?

MM: I was trying to remember. Did he go to Chicago?

BC: He went to Chicago I think, and then later came back.

MM: Well, he and Sonia Minsikoff I think were married, weren't they?

BC: That I don't know.

MM: I think he and Sonia were man and wife. I'm not sure of that, but I didn't care for either of them. I knew Sonia when she was a research assistant at Columbia. I never cared for her and I never cared for Grant. I thought he was a little rat.

BC: I know Grant Gilmore left precipitously, and maybe you can tell me what the story behind that was.

MM: Well, I'm sure he wasn't fired. I'm sure he left of his own free will. He was very popular with some people as a teacher, but he had one policy that I thought was bad. He didn't let the students read cases. He lectured them, and he wouldn't assign cases to them to read or didn't encourage them to go the library, look up cases on a doubtful point.

BC: What was the theory behind that?

MM: Well, I don't really know. I don't understand it, you see. That was one of the things that made me angry.

BC: How was the relationship between the Law School and the university during some critical points. During the anti-war demonstrations, can you comment on that?

MM: I don't really know those. I can remember one group of political science people moving to Princeton, but I don't even remember exactly what the cause of that was. There were a number of very distinguished people, headed by a Canadian – his name is escaping me at the moment, but he was a very famous person – and he went to Princeton with a group of people.

BC: How about the 1950s, the McCarthy era?

MM: Well, of course, McCarthy had no support around New Haven. Everybody thought McCarthy was an evil man.

BC: So there was no real political upheaval in the Law School because everyone was pretty much of the same opinion.

MM: The same opinion that he was a son of a bitch.

BC: Right. [tape turned off]

BC: You know, we're renovating the Law School building now, and I'd be interested to know what the building was like when you first came to Yale. You must have come directly to the new building.

MM: I did, yes.

BC: And what did it feel like?

MM: Well, we weren't in the new building classrooms the first year I was here. The first term the classes were all down at Hendrie Hall, but people were living in the new building. I lived in the new building with George Dession. Charlie Clark had put me in to share this room with George Dession, and the students then filled up the new building but not the offices. Then at Christmas time all the offices and classrooms were changed and moved to the new building. So in the second term, beginning in 1931 all the classes were in the new building. From then on, as far as I know, all the classes have been in the new building. Somebody gave money in a way that beat that corner. We were supposed to have that corner there between, what is it, Wall Street and High Street. We were supposed to have that corner that's now that funny library.

BC: Do you mean the Beinecke?

MM: Yes. So we got beat out of that. We got some rooms down below. The International Law Library was put in the basement down below the street. We were very badly treated on that. There's no question we should have had that corner.

BC: The Library had chandeliers, wood floor, big library tables.

MM: Frankly, I don't have any memory of what it was. I know what it is now. It was a very nice place is all I can remember. It was a very comfortable place to work.

BC: Was there a dining room in the building?

MM: Yes, the students ate where they eat now. The faculty at first ate there. It finally was turned over to the students.

BC: It was originally a faculty dining room?

MM: Faculty dining room in the beginning. I don't know when it was changed, but I remember the faculty dining room is where Abe Fortas and Arthur Corbin tangled.

BC: They had disagreements over lunch?

MM: Yes.

BC: What happened there?

MM: Well, just arguments. I remember one very funny pass between Thurman Arnold and Reynolds Vance. I'll have to try and remember it. I can't quite get it now. The retort from Arnold to Reynolds was, "Reynolds, when you do something or other, you can't destroy it. It's already dead." But I can't quite get the connection now. Vance and Arnold didn't like each other.

BC: What about Abe Fortas?

MM: Abe Fortas got along with everybody. He was a pretty good mixer. He could leave the faculty and come back, which was very difficult in those days.

BC: Who else was doing the arguing? You mentioned before there were some arguments in the faculty dining room.

MM: Well, the arguments I remember were Vance and Arnold. That's the one that's clearest in my mind, but Arthur Corbin sort of presided in that room. He was the boss.

BC: And how was Corbin, was he a prickly guy?

MM: Corbin?

BC: Yes.

MM: Oh, Corbin, he was just very talkative. He'd talk your sleeve off, take you half an hour or an hour to get away from him. Corbin was also in the Arts and Science faculty, you know. He was in the graduate school

teaching political science. Canadian. He had been dean at McGill, but I think he had seminars in that law school.

BC: Are you getting up?

MM: Yes I won't be long. [tape turned off]

BC: I think you were saying that Corbin brought Hohfeld to Yale, as well as others...

BC: You were going to tell me about Walter Cook.

MM: Yes, you know, Cook and my wife were related. I taught at Northwestern one summer when Cook was on the faculty of Northwestern, and Cook and my wife are related through the Lee family in Virginia some way that I never understood or wanted to bother to understand. Cook may have given me some of this information and I haven't been able to say where I learned it or what it was because he's a very talkative man and he was at Yale for many years. But I tried to bring Cook back here one time.

Oh, that's just a neighboring friend. She'll come and go. A very nice friend.

Where was I? On Cook. Cook and my wife were cousins and I taught for a summer there at Northwestern with him and got to know him pretty well. He'd just talk your head off. He was like Corbin, he never stopped. I was going to say, I wanted to bring Cook back to Yale, but he was hard up. He didn't have any money. Northwestern didn't have much, and both Corbin and Lorenzen said to me, "You bring that son of a bitch back over our dead bodies." I started to think I shouldn't put all this into the records.

BC: No, it's fine.

MM: It might be useful to somebody some day, to know what the real relations were.

BC: Yes, that's what I'm interested in. About legal realism, were there people at the Law School who just hated it and didn't want to have anything to do with it? Was that a lively discussion?

MM: No, they wouldn't have dared say so and wouldn't dare say so today, though I don't think many of them are realists today. I think they're more Harvard types.

BC: So it wasn't really a lively discussion. There wasn't controversy over it.

MM: No, a fellow would have to leave if he wasn't a realist.

BC: I've kept you a long time. I hope it wasn't too long, but thank you very much for this interesting conversation.

